

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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VINCENT BERTOLINO,

Plaintiff,

-against-

**RULE 68
OFFER OF JUDGMENT**

THE CITY OF NEW YORK, POLICE OFFICER LUIS
CASTILLO, Shield No. 20688; POLICE OFFICER "FNU"
(FIRST NAME UNKNOWN) ROCHA; POLICE
OFFICER DIANA ESCALERA, Shield No. 1699;
POLICE OFFICER JOHN NUNEZ; JOHN DOE #1;
JOHN DOES; and RICHARD ROES,

15 cv 07327 (RJS)

Defendants.

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Pursuant to Rule 68 of the Federal Rules of Civil Procedure, defendants hereby offer to allow plaintiff Vincent Bertolino to take a judgment against the City of New York in this action for the total sum of Eight Thousand Five Hundred and One (\$8,501.00) Dollars, plus reasonable attorneys' fees, expenses, and costs to the date of this offer for plaintiff's federal claims.

This judgment shall be in full satisfaction of all federal and state law claims or rights that plaintiff may have to damages, or any other form of relief, arising out of the alleged acts or omissions of defendants or any official, employee, or agent, either past or present, of the City of New York, or any agency thereof, in connection with the facts and circumstances that are the subject of this action.

This offer of judgment may only be accepted up to and including October 12, 2016.

This offer of judgment is made for the purposes specified in Rule 68 of the Federal Rules of Civil Procedure and is not to be construed as an admission of liability by defendants or any official, employee, or agent of the City of New York, or any agency thereof; nor is it an admission that plaintiff has suffered any damages.

Acceptance of this offer of judgment will act to release and discharge defendants; their successors or assigns; and all past and present officials, employees, representatives, and agents of the City of New York, or any agency thereof, from any and all claims that were or could have been alleged by plaintiff arising out of the facts and circumstances that are the subject of this action.

Acceptance of this offer of judgment also will operate to waive plaintiff's rights to any claim for interest on the amount of the judgment.

Plaintiff Vincent Bertolino agrees that payment of Eight Thousand Five Hundred and One (\$8,501.00) Dollars within ninety (90) days of the date of acceptance of the offer shall be a reasonable time for such payment, unless plaintiff received medical treatment in connection with the underlying claims in this case for which Medicare has provided, or will provide, payment in full or in part. If plaintiff Vincent Bertolino is a Medicare recipient who received medical treatment in connection with the claims in this case, the ninety (90) day period for payment shall start to run from the date plaintiff submits to counsel for defendants a final demand letter from Medicare.

By acceptance of this Rule 68 Offer of Judgment, plaintiff Vincent Bertolino agrees to resolve any claim that Medicare may have for reimbursement of conditional payments it has made as secondary payer, and a Medicare Set-Aside Trust shall be created, if required by 42 U.S.C. § 1395y(b) and 42 C.F.R. §§ 411.22 through 411.26. Plaintiff Vincent Bertolino

further agrees to hold harmless defendants and all past and present officials, employees, representatives and agents of the City of New York, or any agency thereof, regarding any past and/or future Medicare payments, presently known or unknown, made in connection with this matter.

The judgment shall contain and recite the terms and conditions set forth herein.

Dated: New York, New York
September 28, 2016

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Defendants
100 Church Street, Room
New York, New York 10007

By


Elissa Jacobs
Assistant Corporation Counsel

To: VIA ELECTRONIC MAIL
Jeffrey A. Rothman, Esq.
315 Broadway, Suite 200
New York, New York 10007

Jeffrey A. Rothman
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October 5, 2016

By Hand To:

Elissa Jacobs, Esq.
Assistant Corporation Counsel
NYC Law Department
Special Federal Litigation Division
100 Church Street
New York, NY 10007

Re: Vincent Bertolino v. City of New York, et al.; 15 Civ. 7327 (RJS)

Dear Elissa:

Plaintiff hereby accepts Defendants' Rule 68 Offer of Judgment of September 28, 2016. Concerning attorney's fees and costs, I will email you my time sheets, and an itemization of my out-of-pocket expenses, shortly so we can see if we can reach a stipulation as to the attorney's fees and costs that would avoid the need for a formal fee application.

Thank you for your consideration in this matter.

Sincerely yours,



Jeffrey Rothman

2016 OCT -5 P 12:03

OFFICE OF CORP. COUNSEL
COMMUNICATIONS UNIT

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Plaintiff,

-against-

THE CITY OF NEW YORK; POLICE OFFICER
LUIS CASTILLO, Shield No. 20688; POLICE
OFFICER "FNU" (FIRST NAME UNKNOWN)
ROCHA; POLICE OFFICER DIANA
ESCALERA, Shield No. 1699; POLICE OFFICER
JOHN NUNEZ; JOHN DOE #1; JOHN DOES;
and RICHARD ROES,

Defendants.

-----X

STATE OF NEW YORK)

)ss.:

COUNTY OF NEW YORK)

PROOF OF SERVICE

15 Civ. 7327 (RJS) (GWG)

I, Jeffrey A. Rothman, hereby affirm under the penalties of perjury:

I am not a party to this action, I am over 18 years of age and I am self-employed as an attorney at 315 Broadway, Suite 200; New York, New York, 10007. I am counsel for the Plaintiff in the above-captioned action, and am admitted to practice in the United States District Court for the Southern District of New York.

On October 5, 2016 approximately 12:03 p.m., at the New York City Law Department, 100 Church Street, New York, NY 10007, I served Plaintiff's acceptance of Defendants' September 28, 2016 Rule 68 Offer of Judgment, by personally delivering and leaving a true copy or copies of the aforementioned document with a clerk authorized to accept service, who time-stamped the document to acknowledge receipt of same.

October 20, 2016



Jeffrey A. Rothman